

## Small Business Administration

## § 142.8

services, or money, or the party to the contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

### § 142.4 What is a statement?

A “statement” means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from SBA. “From SBA” means that SBA provides some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or is potentially liable to another party for some portion of the money or property under such contract, bid, grant, loan, or benefit. A statement is made, presented, or submitted to SBA when it is received by SBA or an agent, fiscal intermediary, or other entity acting for SBA.

### § 142.5 What is a false claim or statement?

(a) A claim submitted to SBA is a “false” claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim:

- (1) Is false, fictitious or fraudulent;
- (2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;
- (3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to SBA is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement:

- (1) Asserts a material fact which is false, fictitious, or fraudulent; or
- (2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a

duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

### § 142.6 What does the phrase “know or have reason to know” mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

- (a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or
- (b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or
- (c) Acts in reckless disregard of the truth or falsity of the claim or statement.

## PROCEDURES LEADING TO ISSUANCE OF A COMPLAINT

### § 142.7 Who investigates program fraud?

The Inspector General, or his designee, is responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents. The methods for serving a subpoena are set forth in part 101 of this chapter.

### § 142.8 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his designee. If the reviewing official determines that the report provides adequate evidence that a person submitted a false claim or statement, the reviewing official transmits to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include

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the reviewing official's statements concerning:

- (1) The reasons for the referral;
- (2) The claims or statements upon which liability would be based;
- (3) The evidence that supports liability;
- (4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;
- (5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and
- (6) The likelihood of collecting the proposed penalties and assessments.

(b) If at any time, the Attorney General or designee requests in writing that this administrative process be stayed, the Administrator must stay the process immediately. The Administrator may order the process resumed only upon receipt of the written authorization of the Attorney General.

### § 142.9 When will SBA issue a complaint?

SBA will issue a complaint:

- (a) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and
- (b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed \$150,000. A group of related claims submitted at the same time includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

### § 142.10 What is contained in a complaint?

(a) A complaint is a written statement giving notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and of the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or

to have submitted false claims to SBA is referred to as the "defendant."

(b) The reviewing official may join in a single complaint false claims or statements that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that SBA seeks to impose civil penalties, assessments, or both, against each defendant and will include:

- (1) The allegations of liability against each defendant, including the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;
  - (2) The maximum amount of penalties and assessments for which each defendant may be held liable;
  - (3) A statement that each defendant may request a hearing by filing an answer and may be represented by a representative;
  - (4) Instructions for filing such an answer;
  - (5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.
- (d) The reviewing official must serve any complaint on the defendant and provide a copy to the Office of Hearings and Appeals (OHA). If a hearing is requested, an Administrative Law Judge (ALJ) from OHA will serve as the Presiding Officer.

### § 142.11 How will the complaint be served?

(a) The complaint must be served on individual defendants directly, a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director, except that service also may be made on any person authorized by appointment or by law to receive process for the defendant.

(b) The complaint may be served either by:

- (1) Registered or certified mail (return receipt requested) addressed to the defendant at his or her residence,